

CHARLES ROPER 8/25/2020

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 SOUTHEASTERN DIVISION
4
5
6 ROBIN MESEY and JENNIFER MESEY,)
7 Plaintiffs,)
8 vs.)
9 CITY OF VAN BUREN, MISSOURI, et) Case No. 1:19-CV-71 SNLJ
10 al.,)
11 Defendants.)

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13
14
15 DEPOSITION OF CHARLES ROPER
16 TAKEN ON BEHALF OF THE PLAINTIFF
17 AUGUST 25, 2020
18
19
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21
22
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25

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1 A. It was before then.

2 Q. Maybe -- that was maybe a date this report
3 was prepared.

4 MR. PHILLIPS: Jim, if it helps --

5 MR. SCHOTTEL: Yeah. I just don't have it
6 off the top of my head.

7 MR. PHILLIPS: My understanding is that
8 your complaint of incident was February 22nd, 2019.
9 Does that sound right?

10 Q. (BY MR. SCHOTTEL.) Does that sound right to
11 you to the date of the incident, according to your --

12 MR. PHILLIPS: Hold on. Let's --

13 MR. SCHOTTEL: I just want to make sure
14 we're all --

15 MR. PHILLIPS: Why don't we go off the
16 record.

17 MR. SCHOTTEL: Sure.

18 (OFF THE RECORD.)

19 MR. SCHOTTEL: Back on the record.

20 Q. (BY MR. SCHOTTEL.) After reviewing the
21 records, does February 22nd, 2019 -- does that sound
22 about right for the date of the incident that's the
23 subject of this case?

24 A. Yes, sir.

25 Q. Okay. Were you carrying a firearm that day?

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1 A. The date of the incident? Yes, sir.

2 Q. Okay. And where were you -- where on your
3 person were you carrying it?

4 A. On my right hip.

5 Q. Okay. And I'm assuming you wear a holster on
6 your right hip.

7 A. Yes, sir.

8 Q. All right. And is it -- can -- was it
9 concealed on that day?

10 A. No, sir.

11 Q. Okay. On that day, did you -- do you have to
12 have a permit to carry a concealed weapon?

13 A. No. State of Missouri doesn't require that.

14 Q. And on February 22nd, 2019, what kind of
15 weapon were you carrying?

16 A. It was a Springfield XD-S.

17 Q. Okay. And what is the capacity of that gun?

18 A. Seven plus one.

19 Q. And I know what that means, but could you
20 just give an explanation what that means, seven plus
21 one.

22 A. Yes, sir. It means it can hold seven in the
23 magazine and one in the chamber.

24 Q. Okay. And is -- is the chamber in that gun
25 in the handle? In the grip. I'm sorry.

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EXHIBIT 1

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1 A. My father-in-law's. Sorry.

2 Q. Okay. And when did you first see your
3 father-in-law's dog?

4 A. As I approached the intersection.

5 Q. And what is your father-in-law's dog's name?

6 A. Draco.

7 Q. Can you spell that for me.

8 A. I think he spells it D-R-A-C-O.

9 Q. Okay. And how old is Draco now?

10 A. Well, he's deceased now.

11 Q. When did he pass away?

12 A. Would have been May or June of this year.

13 Q. Well, at the time he passed away, how old was
14 he?

15 A. Don't quote me on it, but I believe my
16 father-in-law said he was like 16 years old. He was
17 an old dog. That's the best to my ability I know.

18 Q. And what kind of breed was Draco, if you
19 know?

20 A. He was a mixed breed, as best I know.

21 Q. All right. So on the date of the incident,
22 do you remember was it the -- when you first saw
23 Draco, was it in the morning time? Afternoon?
24 Evening?

25 A. I think this would have been around noon,

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1 because we were getting hungry for lunch. So it would
2 have been somewhere around that time.

3 Q. And you said -- were you driving at the time
4 you saw Draco?

5 A. Yes, sir.

6 Q. What were you driving?

7 A. My son's Ford Escape.

8 Q. And why were you driving your son's car at
9 the time?

10 A. Because mine was broke.

11 Q. And how old is your son?

12 A. He's 20.

13 Q. And was there anyone else in the vehicle with
14 you when you were driving and saw Draco that day?

15 A. My wife.

16 Q. Was she in the passenger's seat?

17 A. Yes, sir.

18 Q. And I'm sorry. Could you describe again
19 where Draco was on -- he was on the ground? Is that
20 what you said?

21 A. Yes, sir. It was on Independence Street,
22 where Independence and Dale meet.

23 Q. So was he in the middle of the street, or off
24 to the side, or by the curb, or --

25 A. Well, there's no curb. I mean --

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1 Q. Oh.

2 A. It would have -- yeah. It would have been
3 middle. Yeah. It had to have been middle-ish area.

4 Q. Okay.

5 A. The road's not very wide.

6 Q. And what did you do when you saw him on the
7 ground?

8 A. I stopped the vehicle, and stepped out and
9 yelled at the dogs to get off of him.

10 Q. What were the dogs -- you said dogs as
11 plural. Was there more than one?

12 A. Yes, sir.

13 Q. How many dogs were there near Draco when you
14 first saw them?

15 A. Two.

16 Q. And what were those dogs doing at the time
17 you saw Draco?

18 A. The smaller dog was biting at like I do
19 believe his paws -- his front paws. And then the
20 bigger one was behind him, and had him by the throat,
21 neck, whichever way.

22 Q. Did -- did you know either of these two dogs
23 by name on that day?

24 A. No, sir.

25 Q. Can you describe what those two dogs looked

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1 **like.**

2 A. White and brown.

3 **Q. Were both of them the same color, or --**

4 A. Honestly, I don't know.

5 **Q. Prior to the -- this day when you saw those**
6 **two dogs near Draco, had you seen those two dogs**
7 **before?**

8 A. Yes, sir.

9 **Q. And where had you seen those two dogs before?**

10 A. In my father-in-law's yard, attacking Draco.

11 **Q. And that's before this day?**

12 A. Yes, sir.

13 **Q. How many times would you say you saw that**
14 **happen before that day?**

15 A. That I personally witnessed was one.

16 **Q. Do you know of any other person that**
17 **witnessed that?**

18 A. My father-in-law.

19 **Q. And what is your father-in-law's name?**

20 A. Jeffrey Walberg.

21 **Q. At the time of this occurrence when you saw**
22 **Draco, was Draco on a leash?**

23 A. No.

24 **Q. With respect to your father -- or I'm**
25 **sorry -- what kind of residence did your father-in-law**

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1 Q. When you -- did you park your vehicle at some
2 point? When you -- when you arrived and saw Draco,
3 did you park your vehicle at some point?

4 A. I stopped in the middle of the road.

5 Q. Okay. Did you put your vehicle in park so it
6 wouldn't roll?

7 A. Yes, sir.

8 Q. All right. What road was that when you
9 parked your vehicle?

10 A. Be Dale Street.

11 Q. Okay. What street did your father-in-law
12 live on?

13 A. Dale Street.

14 Q. Prior to the day of this incident, did you
15 know the owner of the two dogs that were near Draco
16 when you saw them?

17 A. Yes.

18 Q. And who were the owners?

19 A. Jennifer and Robin Mesey.

20 Q. And how did you know them?

21 A. They were good friends with my wife.

22 Q. Okay. What did you do after you parked your
23 vehicle in the middle of Dale Street?

24 A. I got out and yelled at the dogs to get away
25 from him.

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1 Q. So how did she exit your vehicle?

2 A. Through the door.

3 Q. Through the same door that you got out of?

4 A. I don't know. I very seriously doubt it, but
5 I don't know.

6 Q. Okay. Well, I'm just -- I'm just trying to
7 figure out how she was in the passenger's seat and
8 then wound up behind you. If you know.

9 A. Because I was standing in front of the
10 vehicle.

11 Q. Oh, okay. Were you standing directly in
12 front of the middle of the vehicle, or were you to
13 either side of the vehicle?

14 A. I would have been on the driver's side of the
15 vehicle.

16 Q. What happened after you yelled at the dogs?

17 A. Neither dog let go of him. I fired one
18 warning shot into the ground.

19 Q. And are you referring to the gun that you had
20 on your hip?

21 A. Yes, sir.

22 Q. What type of surface was the ground that you
23 fired the shot into?

24 A. Grass and dirt.

25 Q. So the vehicle that you were driving was

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1 **parked, and you went -- did you go closer to the side**
2 **of the street, or did the street have grassy areas in**
3 **it?**

4 A. The -- the road they were on runs east and
5 west. Back behind them was a grassy yard. Or
6 correction. The road -- Independence runs north and
7 south. Dale runs east and west.

8 **Q. When you fired the shot into the ground,**
9 **where was your wife, Donna?**

10 A. Still would have been behind me. Because I
11 didn't see her.

12 **Q. How close to the dogs were you when you fired**
13 **the warning shot?**

14 A. I would say three to five feet, give or take.

15 **Q. Were they directly in front of you?**

16 A. They might have been off to the left a little
17 bit.

18 **Q. Were the two dogs and your father-in-law's**
19 **dog -- were they on a grassy area, or in the street?**

20 A. They were on the blacktop.

21 **Q. And what happened after you fired the warning**
22 **shot?**

23 A. My gun jammed and I had to clear it.

24 **Q. Can you describe what you mean by your gun**
25 **jammed.**

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1 Q. On which side of you did she walk around you?

2 A. On my right side.

3 Q. And where were you standing at this point
4 with respect to your truck?

5 A. I would have been in front of it still,
6 towards the driver's side.

7 Q. Okay. After you firing a warning shot and
8 yelling at the dogs, were the dogs -- the two dogs
9 that were near your father-in-law's dog, were they
10 ignoring you?

11 A. The smaller one ran off, went on up
12 Independence Street up the hill.

13 Q. Do you know if you struck that dog with a
14 bullet or not?

15 A. I honestly don't believe so, because I seen
16 the grass fly.

17 Q. What happened after that other dog ran off?

18 A. My wife walked around me, said that she was
19 going to break it up. And that's when the bigger dog
20 let go of Draco, and was coming after her. And then
21 that's when I fired the shot and stopped him from
22 attacking my wife.

23 Q. Can you describe how the other dog was
24 attacking your wife.

25 A. It didn't attack her. It was coming after

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1 her to try and attack her, teeth showing, barking,
2 acting aggressive. I mean, I don't know how to
3 explain it.

4 **Q. So you mentioned its teeth were showing.**

5 A. Yes, sir.

6 **Q. How close were you to the dog when you saw**
7 **the teeth showing?**

8 A. We were still within that three to five-foot
9 range.

10 **Q. And what else did you observe about that dog?**

11 A. What -- I don't know. My family's always
12 called it hackles. The hair on the back of their neck
13 and on their tail was raised. His tail was stiff. He
14 was in attack mode.

15 **Q. How do you know that the dog was in attack**
16 **mode?**

17 MS. KAYSER: Asked and answered. He's
18 already described it.

19 **Q. (BY MR. SCHOTTEL.) Subject to that, you can**
20 **answer the question.**

21 A. Okay. Because his teeth were showing, and
22 his hackles were raised, and he was coming after my
23 wife.

24 **Q. And can you describe what you mean coming**
25 **after your wife.**

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1 A. He was --

2 MS. KAYSER: Objection.

3 MR. PHILLIPS: He was -- oh, sorry.

4 MS. KAYSER: Asked and answered. You can
5 answer it one more time.

6 THE WITNESS: It was physically coming
7 toward her.

8 Q. (BY MR. SCHOTTEL.) Walking towards her?

9 A. I -- it didn't take but two steps.

10 Q. Can you describe what that means, it didn't
11 take but two steps.

12 A. I don't know if you can classify it as a
13 walk, a jog, a run. It didn't -- we were -- we were
14 within three feet. Reactionary gap is 21 feet. We
15 were way inside that. So it didn't take a bunch of
16 steps before I protected my wife.

17 Q. And I think you testified you thought the dog
18 was going to attack your wife.

19 A. I knew the dog was coming after my wife.

20 Q. How did you know that?

21 A. Because it was looking straight at her.

22 Q. Okay. Have you ever seen -- prior to this
23 date, have you ever seen a dog attack a human before?

24 A. Yes.

25 Q. Where?

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1 **knew to be the Meseys'. Correct?**

2 A. Yes.

3 **Q. And your wife was friends with the Meseys.**
4 **Is that correct?**

5 A. Yes.

6 **Q. And on that day, is it fair to say that she**
7 **knew where they were living?**

8 A. Yes. We were standing in front of their
9 house.

10 **Q. Did you go to their house and ask them for**
11 **help to get their dogs away from Draco?**

12 A. No.

13 **Q. Why not?**

14 A. We yelled at them. Nobody answered. There
15 was no vehicles there. I wasn't even sure if they
16 were there.

17 **Q. Were they there?**

18 A. Yes.

19 **Q. Did you knock on the door or bang on the**
20 **door?**

21 A. No. When I walked up there, they came
22 outside.

23 **Q. Well, prior to you confronting the dogs, did**
24 **you walk up to their door and bang on their door?**

25 A. No.

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1 **procedures. Could you just read your answer to that**
2 **question.**

3 A. There were no formal policy or procedures in
4 place at the time of the incident.

5 Q. And I noticed you said there were no formal
6 policy or procedures. Were there informal policy and
7 procedures?

8 A. I'd only been there for three days. I don't
9 know.

10 Q. I was just curious why you stated there were
11 no formal, instead of -- why you clarified formal.
12 That's all I was asking.

13 A. Oh, I have --

14 Q. Not trying to trick you.

15 A. No. You're -- you're fine.

16 Q. Okay. And you said you were familiar with
17 Exhibit 5, the leash laws. Is that correct?

18 A. I've seen them since they've been printed
19 out. Yeah.

20 Q. When the bigger dog that you know you shot --
21 or admitted you shot -- when you shot the bigger dog,
22 the bigger dog did not have a leash on. Is that
23 correct?

24 A. No, sir.

25 Q. When you shot the bigger dog without the

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1 **leash, were you enforcing the leash laws that were in**
2 **place?**

3 A. No, sir.

4 **Q. Then what was your ultimate purpose in firing**
5 **your weapon at the bigger dog?**

6 MS. KAYSER: Objection. Asked and
7 answered.

8 THE WITNESS: To protect my wife.

9 **Q. (BY MR. SCHOTTEL.) Give me a couple minutes**
10 **to look through and we should be finished. I missed**
11 **something. Could you take a look at Plaintiff's**
12 **Exhibit 4. Just take a look at it. It's your**
13 **application for employment with City of Van Buren.**
14 **Right? And could you look at the last page entitled**
15 **the oath of office. And could you read that for me**
16 **into the record.**

17 A. Okay. It says I, Charles Roper, do solemnly
18 swear that I possess the qualifications for the
19 position of police officer as prescribed by law; that
20 I will support the Constitution of the United States,
21 and of the State of Missouri, the provisions of all
22 laws of the state affecting cities of this class, and
23 the ordinances of the City of Van Buren, Missouri; and
24 faithfully demean myself in office, so help me God.

25 **Q. And what was the date that you had signed**

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1 **that oath of office?**

2 A. 1/30/2019.

3 **Q. And whose signature is below there?**

4 A. Below mine, or --

5 **Q. Yes. Below yours.**

6 A. That's the city clerk. I think her name was
7 Jeri Platt.

8 **Q. Okay. And that was just like a notary seal.**
9 **Is that correct?**

10 A. Yes, sir.

11 **Q. All right. Before you shot the bigger dog,**
12 **did your wife, Donna, make any comments to you like**
13 **shoot the dog?**

14 A. No.

15 **Q. No? Okay. Could you describe your wife's**
16 **reaction after you shot the dog as it was -- it was**
17 **near her?**

18 A. Like she walked over there to try and see if
19 she could check on Draco, and then she got in the
20 truck and went back down to my father-in-law's.

21 **Q. How close was your wife to the dog when**
22 **you -- to the bigger dog when you shot it?**

23 A. I pulled her back behind me. So if I was
24 three to four foot, she was probably, you know, four
25 to five.

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1 Q. So you pulled her -- you pulled your wife
2 behind you before shooting the dog?

3 A. Yes.

4 Q. What did the dog do when you pulled your wife
5 behind you?

6 A. Nothing different.

7 Q. Did it stand in front of you?

8 A. It was still coming her direction. This was
9 a very quick time this happened.

10 Q. But if you pulled your wife behind you, then
11 you were in between the dog and --

12 A. And her.

13 Q. -- your wife.

14 A. Yes.

15 Q. Right. So that's what I was asking.

16 A. Okay.

17 Q. What did the dog do when you pulled your wife
18 directly behind you?

19 A. Well, I don't think it was directly behind
20 me, but behind me. But it didn't do anything
21 different. It was still approaching us. You know.

22 Q. So it was approaching you as well.

23 A. Well, whenever I put her behind me, I guess
24 yeah, it would have been approaching me.

25 Q. Was the dog barking at the time?

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1 deputy.

2 Q. (BY MR. SCHOTTEL.) The form -- the form is
3 not consistent with your testimony of firing two
4 rounds.

5 A. No.

6 MR. SCHOTTEL: Okay. All right. I think
7 that's all the questions I have.

8 MR. PHILLIPS: Mind if I power through
9 about two minutes worth of questions before we get
10 kicked out of here?

11 THE WITNESS: You're fine.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. PHILLIPS:

14 Q. Okay. So you were driving your son's Ford
15 Escape. Right?

16 A. Yes, sir.

17 Q. Was that a police vehicle?

18 A. No, sir.

19 Q. Were you in uniform?

20 A. No, sir.

21 Q. The weapon that you used to defend your wife,
22 was that a gun that was given to you by the police
23 department?

24 A. No, sir.

25 Q. Was that your personal weapon?

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1 A. Yes, sir.

2 Q. When you were defending your wife, were you
3 on your way back after visiting your father-in-law?

4 A. Yes, sir.

5 Q. Was that a social visit?

6 A. Yes, sir.

7 Q. Had you been visiting him in your capacity as
8 a police officer?

9 A. No, sir.

10 Q. When you left his residence, were you leaving
11 to go and do police work?

12 A. No, sir.

13 Q. As of the date of this incident, you had
14 become a reserve police officer within days of that
15 date. Is that right?

16 A. Yes, sir.

17 Q. And at that same time, you were also a
18 reserve deputy with the Ripley County Sheriff's
19 Office. Is that right?

20 A. Yes, sir.

21 Q. And you were also working with the Butler
22 County EMS. Is that right?

23 A. Yes, sir.

24 Q. And you were also working with West Carter
25 County Ambulance. Is that right?

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1 A. Okay. If I was already working at West
2 Carter I wasn't working at Butler. Sorry.

3 **Q. Okay.**

4 A. I can't remember exactly which one. I was
5 working for one of the ambulance services at the time.
6 Yes.

7 **Q. Okay. And in fact, you're even wearing an**
8 **EMS shirt right now; aren't you?**

9 A. Yes, sir.

10 **Q. So you were working in some capacity doing**
11 **EMS work, and you were a reserve deputy at the same**
12 **time as this incident. Correct?**

13 A. Yes, sir.

14 **Q. Okay. Did this incident have anything to do**
15 **with your being a reserve deputy?**

16 A. No, sir.

17 **Q. Did this incident have anything to do with**
18 **your being an EMS worker?**

19 A. No, sir.

20 **Q. Did this incident have anything to do with**
21 **you being a police officer?**

22 A. No, sir.

23 **Q. One last question. And I'm sorry to pry on**
24 **this. You said that Draco had passed away, it sounded**
25 **like within the last few months. Is that right?**

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1 A. Yeah. It hasn't been too long ago.

2 Q. Okay.

3 A. It was -- it was May or June of this year.

4 Yeah.

5 Q. Okay. How was his health after he was
6 attacked by these two dogs?

7 A. I didn't see him every day until my
8 father-in-law brought him over to my house when he
9 moved in with us for a while. When he brought him to
10 my house, he was in very bad health.

11 Q. Okay.

12 A. They said they believed he had had a stroke.

13 Q. Okay.

14 A. So he was -- horrible health. He had -- he
15 was blind. He was deaf. Had a few teeth left. I
16 mean, he was an old dog.

17 Q. Okay. Did you place Mr. or Mrs. Mesey under
18 arrest that day?

19 A. No, sir.

20 Q. Did you issue either of them a ticket?

21 A. No, sir.

22 MR. PHILLIPS: All right. No other
23 questions.

24 MS. KAYSER: I have none. Do you have any
25 follow-ups?

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